

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Eduardo Ibarra Banuelos, #292803)	
)	C/A No. 4:08-2628-GRA
Petitioner,)	
)	
v.)	ORDER
)	(Written Opinion)
Warden, Lee Correctional Institution,)	
)	
)	
Respondent.)	
_____)	

This matter comes before the Court for a review of the magistrate's Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 73.02(B)(2)(c), D.S.C., filed on July 27, 2009. Petitioner originally filed for relief under 28 U.S.C. § 2254, on June 25, 2008. Respondent filed a motion for summary judgment on December 10, 2008. The Court issued an order pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), on December 12, 2008, advising Petitioner about the consequences of failing to respond to Respondent's motion. On January 12, 2009, Petitioner filed a response in opposition to Respondent's motion.

The magistrate recommends granting Respondent's motion for summary judgment. Petitioner filed objections on August 7, 2009, within the statute of limitations. For the reasons stated herein, notwithstanding the petitioner's objections, this Court adopts the magistrate's Report and Recommendation in its entirety.

Standard of Review

Plaintiff brings this claim *pro se*. This Court is required to construe *pro se* pleadings liberally. Such pleadings are held to a less stringent standard than those drafted by attorneys. *See Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978). This Court is charged with liberally construing a pleading filed by a *pro se* litigant to allow for the development of a potentially meritorious claim. *See Boag v. MacDougall*, 454 U.S. 364, 365 (1982).

The magistrate makes only a recommendation to this Court. The recommendation has no presumptive weight, and responsibility for making a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). This Court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and this Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). This Court may also "receive further evidence or recommit the matter to the magistrate with instructions." *Id.*

Discussion

In order for objections to be considered by a United States District Judge, the objections must specifically identify the portions of the Report and Recommendation to which the party objects and the basis for the objections. FED. R. CIV. P. 72(b); *see United States v. Schronce*, 727 F.2d 91, 94 n.4 (4th Cir. 1984); *Wright v. Collins*, 766 F.2d 841, 845-47 nn.1-3 (4th Cir. 1985). "Courts have . . . held *de novo* review to be unnecessary in . . . situations when a party makes general and conclusory

objections that do not direct the court to a specific error in the magistrate's proposed findings and recommendation." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). Furthermore, in the absence of specific objections to the Report and Recommendation, this Court is not required to give any explanation for adopting the recommendation. *Camby v. Davis*, 718 F.2d 198 (4th Cir. 1983). Petitioner advances four objections to the Report and Recommendation.

In his objections, Petitioner merely reiterates his claims that his attorney was ineffective for failing to call Julie Rosario to testify; for failing to move to suppress wire tap/audiotape recordings; for failing to call witnesses who were necessary for translating English to Spanish; and for failing to file a direct appeal. All of these claims were previously asserted in Petitioner's pleadings. None of the objections offered by Petitioner meet the standard set above as they contain no basis for the objections and contain no additional legal argument beyond what is found in the Petitioner's pleadings. This Court is convinced that Petitioner's objections are without merit.

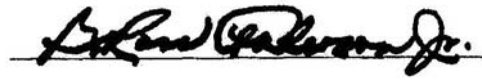
Conclusion

After reviewing the record, and the Report and Recommendation, this Court finds that the magistrate applied sound legal principles to the facts of this case. Therefore, this Court adopts the magistrate's Report and Recommendation in its entirety.

IT IS THEREFORE ORDERED that Petitioner's Writ for Habeas Corpus is DENIED; Respondent's motion for summary judgment is GRANTED; and this Petition is

DISMISSED.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "G. Ross Anderson, Jr.", written over a horizontal line.

G. Ross Anderson, Jr.
Senior United States District Judge

Anderson, South Carolina
August 21, 2009

NOTICE OF RIGHT TO APPEAL

Petitioner is hereby notified that he has the right to appeal this Order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure. Failure to meet this deadline, as modified within Rule 4, will waive the right to appeal.